

## **REMARKS**

In response to the Office Action dated July 17, 2008, the Assignee respectfully requests reconsideration based on the above amendments and on the following remarks.

Claims 1, 3-18, and 20-32 are pending in this application.

### **Rejection of Claim 11 under § 112**

The Office rejected claim 11 under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite. Claim 11 has been amended, so the Office is respectfully requested to re-examine claim 11.

### **Rejection of Claims Under § 102 (e)**

The Office rejects claims 1, 3-18, and 20-32 under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent 7,212,979 to Matz. A claim, however, is anticipated only if each and every element is found in a single prior art reference. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 2d (BNA) 1051, 1053 (Fed. Cir. 1987). *See also* DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2131 (orig. 8<sup>th</sup> Edition) (hereinafter “M.P.E.P.”).

Claims 1, 3-18, and 20-32, however, are not anticipated by *Matz*. These claims recite, or incorporate, many features that are not disclosed or suggested by *Matz*. Independent claim 1, for example, recites “*receiving programming from a distribution network*” and “*establishing communication from the viewer appliance to a remotely located component over a connection to an alternative network.*” Support for these features may be found at least in the as-filed application at page 8, lines 12-24 and at page 12, lines 8-18. Independent claim 1 is reproduced below, and independent claims 9, 18, 23, and 25 recite similar features.

1. A method of capturing user commands from a viewer that are related to viewing content, comprising:

receiving programming from a distribution network;  
receiving a user command at a viewer appliance communicating with the distribution network at a premises of the viewer;  
establishing communication from the viewer appliance to a remotely located component over a connection to an alternative network; and  
relative to receiving the user command, concurrently forwarding the user command from the viewer appliance over the connection to the alternative network.

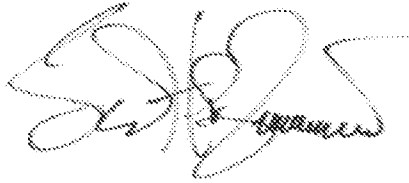
*Matz* does not anticipate these features. *Matz* describes the transmission of viewer actions to a subscriber action database. See U.S. Patent 7,212,979 to *Matz* at column 6, lines 25-30. *Matz*, however, fails to teach or suggest “*receiving programming from a distribution network*” and “*establishing communication from the viewer appliance to a remotely located component over a connection to an alternative network.*” The patent to *Matz*, then, cannot anticipate the independent claims.

Independent claim 23 recites additional, distinguishing features. Independent claim 23, for example, recites “*executing in parallel i) a capture of the user command and ii) concurrently forwarding the user command from the viewer appliance over the connection to the alternative network.*” Support for such features may be found at least in the as-filed application at page 9, lines 5-9. Because *Matz* completely fails to teach or suggest these features, *Matz* cannot anticipate independent claim 23.

Claims 1, 3-18, and 20-32, then, cannot be anticipated by *Matz*. The independent claims recite many features that are not disclosed or suggested by *Matz*. The dependent claims incorporate these same features and recite additional features. Claims 1, 3-18, and 20-32, then, cannot be anticipated, so the Office is respectfully requested to remove the § 102 (e) rejection of these claims.

If any issues remain outstanding, the Office is requested to contact the undersigned at (919) 469-2629 or [scott@scottzimmerman.com](mailto:scott@scottzimmerman.com).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott P. Zimmerman', with a stylized flourish at the end.

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